IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1565 OF 2021

Kirankumar S/o Devidas Deshmukh

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.Chandrakant R. Thorat Advocate for Applicant.
Mr.N.T. Bhagat, A.P.P. for Respondent-State.

...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 13th JANUARY 2022

DATE OF PRONOUNCING ORDER : 4th FEBRUARY 2022

ORDER :

1. Present applicant is apprehending his arrest in connection with Crime No.224 of 2021 registered with Chopda City Police Station, Taluka-Chopda, District-Jalgaon for the offence punishable under Sections 406, 409, 420, 465, 468, 471, 34 of the Indian Penal Code.

2. Heard learned Advocate for the applicant and learned APP for respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is serving as a peon in Shivaji Madhyamik Vidyalaya, Taluka-Chopda, District-Jalgaon. He was also the Chairman of Maratha Samaj Nagri, Sahakari Patsanstha Limited, Chopda, District-Jalgaon. The First Information Report has been lodged by one Sandip Patil, who is on the panel maintained by the Registrar, Co-operatives and approved by the State Government for carrying out audits. The audit of the Patsanstha was carried out for the period 1st April 2018 to 31st March 2020 and then on the basis of that it is alleged that the Patsanstha in the chairmanship of the applicant has over paid amount of Rs.1,86,950/- against the deposits, less amount of interest is charged on some loan transactions, which has caused loss to the Patsanstha worth Rs.9,59,541/-, the Patsanstha has paid the amount of Rs.45,000/- as a loan to one Chotubhai on 25th April 2018 and still it is outstanding. It is also alleged that original receipts of the fixed deposit receipts of mortgage have not been kept in the custody of Patsanstha. The applicant in fact, in response to the notice issued by the Auditor, had given

explanation and copy of the same has been annexed. He has denied all the allegations against him. The Auditor had not considered the explanations given by the applicant. In the said explanation the allegations about preparation of false documents have been denied. None of the depositors have raised any objection regarding the over draft loan. Entire transactions and the affairs of the Patsanstha are legally done and the record has been kept to that effect. Therefore, all the record when it is available with the Patsanstha, the custodial interrogation of the applicant for the purpose of investigation is not required.

4. It has been further submitted on behalf of the applicant that the allegations in the First Information Report do not attract the ingredients of offence punishable under Sections 406, 409, 420, 465, 468, 471 and Section 34 of the Indian Penal Code. In fact custody of all the record has already been taken by the Police. The Manager of Patsanstha was looking after the affairs of the Patsanstha and after the death of recurring agent, namely, Mahendra Patil, there are many irregularities. The Manager started lobbing to get other Board of Directors and in fact affidavit to that effect has been filed by the Manager that the recurring agent is behind all those things. Real brother of the

applicant was released on anticipatory bail by this Court on 8th September 2021. It has been further submitted that one Yuvraj Baviskar has also filed First Information Report against the present applicant vide Crime No.257 of 2020. The applicant was arrested in that crime but the Police could not file charge-sheet within the stipulated period and therefore, the applicant was released on bail under Section 167(2) of the Code of Criminal Procedure on 18th August 2021. Now a different offence is filed by the Auditor. At the most, it would be the irregularities but no offence on criminal side can be said to have been made out against the applicant and therefore, he deserves to be released on anticipatory bail.

5. Per contra, the learned APP strongly opposed the application and submitted that in fact the misappropriation and cheating by the applicant who was the Chairman, one Manoj Visave, who was the Manager and one Chandrashekhar Deshmukh who was the Cashier of the Patsanstha, goes to the tune of Rs.11,91,491/-. The investigation carried out up till now would show that the accused persons had raised loan on the fixed deposits which were kept by the depositors with their Patsanstha. In fact they have mis-utilized the position in the

Patsanstha and raised loan worth Rs.36,22,000/- and thereafter had given loan to 12 depositors to the extent of Rs.3,61,000/- and for which they were supposed to deposit the amount of Rs.56,09,435/-, thereby causing misappropriation or cheating of the depositors to the extent of Rs.9,59,541/-. In the name of one Rekha Chotu Bhoi fake loan has been distributed to the extent of Rs.45,000/-. It has also been transpired that in the name of one Shantaram Raghunath Patil, who was depositor of the Patsanstha, loan has been raised without his consent on the fixed deposits, the details of which have been given in the say and since 2018 it appears that an amount of Rs.25,10,136/- of that depositor is with the Patsanstha which has not been given back to him even after maturity. Same treatment has been given on the fixed deposits of witness Deepak Vijay Pawar and his relatives, Yuvraj Ramdas Baviskar, Bhushan Chindhu Patil, Madhukar Sahebrao Patil, Chandrakant Jamnadas Gujrathi, Sunanda Machindra Koli and Nagindas Tanku Koli. Therefore, the misappropriated amount is Rs.11,91,491/-. It is a public money and misappropriation has been caused by creating false record and therefore, the custodial interrogation of the applicant is necessary.

6. At the outset, it is to be noted that whatever explanation the applicant had given to the Auditor cannot be considered here. It can be presumed that the Auditor would have taken note of that explanation and ultimate audit report would have been prepared. If the said report is not acceptable to the Patsanstha and the applicant, then there would be definitely a relief which the applicant can seek from the appropriate authority. However, on the basis of the documents produced before the Auditor by the persons from the Patsanstha when the audit was conducted, the Auditor has come to the conclusion that false loan transactions have been created, which implies that there were false documents those have been created which are required for the purpose of disbursement of the loan. Further, even excess payment is stated to have been made to the depositors. Excess payment in fact ought to have been approved by the Chairman also and then only that can come into effect. Such excess payment would cause wrongful loss to the Patsanstha, in which the public at large had deposited money with confidence or trust. Being Chairman of Patsanstha, the applicant cannot brush aside the responsibility and throw it on the shoulders of the Manager in respect of the day-to-day affairs of the Patsanstha. Though Manager would be responsible for the day-to-day affairs of the

Patsanstha, the ultimate control is that of the Chairman. No doubt it appears that the said Manager as well as co-accused Chandrashekhar Deshmukh have been released by the Additional Sessions Judge, Amalner by order dated 19th July 2021 and this Court on 8th September 2021 respectively. However, the role attributed to the applicant is required to be considered. The applicant being the Chairman was responsible for the ultimate affairs of the Patsanstha. In respect of taking decision to raise loan on the fixed deposits definitely the Chairman would be responsible and nor the Manager or the Cashier. When depositors deposit their hard earned money in the Patsanstha or the Bank with the confidence that they would earn some amount on that deposited amount by way of interest which would be helpful to raise their financial capacity, then such Patsansthas or Banks are required to act with that responsibility and keep the trust as it is or rather would increase the trust of the depositors by taking correct decisions.

7. Here in the present case, the depositors who had deposited the amount with the Patsanstha were never taken in confidence as it appears at this stage, and the Patsanstha has raised loan as against those fixed deposits. In respect of the above said

witnesses, it appears that some of them had more than 2 deposits, rather some have 23 to 26 deposits with the Patsanstha and on all those fixed deposits loan has been raised and no consent of the respective depositors has been taken at any point of time. To this decision definitely the applicant being the Chairman is directly connected. If all the accused persons are released on anticipatory bail, then definitely investigation would hamper. Further, when it comes to public money, definitely all the efforts should be done by the Police to make a thorough investigation. In such cases, no doubt, the documents play an important role and certain documents have already been seized by the Police, but we cannot forget about the information and those documents which are not in the custody of the Patsanstha or the Police. Possibility cannot be ruled out about the existence of such other documents and therefore, for that purpose definitely the custodial interrogation of the applicant would then be necessary.

8. Reliance can be placed on the observations by the Hon'ble Apex Court in ***P. Chidambaram vs. Directorate of Enforcement, (2019) 9 S.C.C. 24,*** Paras 69, 72, 78, 80, 81 and 83 of which reads as under:-

" 69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

" 72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 of CrPC is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights- safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India."

“78. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In *Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105*, it was held that in economic offences, the accused is not entitled to anticipatory bail. “

“80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in *State of Gujarat v. Mohanlal Jitamalji Porwal, 2 SCC 364*, it was held as under:-

> “5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

“81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in *Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439*, the Supreme Court held as under: (SCC p.449, paras 34-35)

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
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> 35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." (emphasis supplied)

"83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."

9. The police papers would show that the depositors are either agriculturists, small businessmen or retired teachers who had invested their amounts in the Patsanstha and some of them have stated that their signatures on the loan account are forged. Under such circumstance, no case is made out to grant anticipatory bail which is an extra ordinary power and also taking into consideration the position enjoyed by the applicant in the Patsanstha, he cannot be released on the ground of parity also.

10. The Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]

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